

**MINUTES OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE**  
September 14, 1999 - 9:00 a.m. - Room 305 - State Capitol

**Members Present:**

Sen. Howard A. Stephenson, Cochair  
Sen. David Ure, Cochair  
Sen. Eddie "Ed" P. Mayne  
Sen. Howard C. Nielson  
Rep. Judy Ann Buffmire  
Rep. James R. Gowans

**Staff Present:**

Mr. Arthur L. Hunsaker,  
Research Analyst  
Ms. Esther D. Chelsea-McCarty,  
Associate General Counsel  
Ms. Audrey Madsen,  
Legislative Secretary

**Members Absent:**

Sen. Mike Dmitrich  
Sen. L. Alma "Al" Mansell  
Rep. John E. Swallow

**Note:** A list of others present and copies of materials distributed in the meeting are on file in the Office of Legislative Research and General Counsel.

**1. Call to Order and Approval of Minutes of Meeting Held August 25, 1999** - Chair Ure called the meeting to order at 9:15 a.m.

**MOTION:** Rep. Buffmire moved to approve the minutes of August 25, 1999. The motion passed unanimously with Rep. Stephens absent for the vote.

**2. R657-46 The Use of Game Birds in Dog Field Trials and Training - Bulletin, July 15, 1999, p. 57 (Now an existing Rule)** - Roger L. Miller, Miller Kennels and Game Birds, discussed his concerns with rules recently made effective by the department. His four main concerns include the limit of no more than four dogs in the field at one time, requiring two foot streamers on each pheasant's leg, allowing only two firearms in the field at one time and allowing only ten birds to be in the field each day.

Dean Mitchell, Upland Game Program Coordinator, Division of Wildlife Resources, explained the background and development of the rule. He said the rule was written so the public would have notice of the regulations to restrict the use of pen-reared birds to dog-training and eliminate the hunting of protected wildlife. He mentioned three specific issues that were left to the judgement and discretion of officers enforcing the rules.

Rep. Stephens expressed concern with placing restrictions on what citizens can do on their own property. He said the regulations have a good purpose and intent, but are worse than the existing problem.

Rep. Ure said the word "grandfather", referring to the rights of existing trainers, should be in the rule and not simply a matter of policy. He also expressed concern that the rule is written to

suggest that if a bird with a streamer is not caught by a certain date, the bird essentially becomes the property of the state. He asked how the division defines a "field" for determining where these activities can occur. Mr. Mitchell said they are leaving that definition up to the discretion of the officer on the scene. Rep. Ure said a definition of "field" is needed to eliminate arbitrariness.

**MOTION:** Rep. Stephens moved that the division and concerned parties get together to resolve issues, and if the concerns are not resolved he intends to make a motion at a future meeting that the rule be placed on the annual sunset list. Discussion followed. The motion passed unanimously with Rep. Stephens absent for the vote.

**3. R986-412 Conditions of Eligibility (Existing Rule)** - Sen. Mayne said he wants to make sure people know what types of benefits they have available to them and is concerned that the information is not getting to those who may be eligible. Sen. Nielson said this is an important issue because it involves a vulnerable population that needs to be informed.

Steve Johnson, Executive Director, Utahns Against Hunger, suggested that the Department of Workforce Services has been implementing policy without publishing it in rule.

Darin Brush, Acting Director, Office of Communications, Department of Workforce Services, distributed the handout titled, "UTAH-DWS Financial Assistance Manual-Draft." He then addressed the department's rulemaking. He also referred to the Family Employment Program and clarified that it is governed by law and rule.

Mr. Johnson described an incident in which a woman was denied food stamps for a month for not complying with requirements that were not in rule. Mr. Mendenhall said federal regulations are usually adopted and the rules would simply say that those regulations are adopted. Sen. Mayne said when a department determines how to implement a federal standard, with changes adapted to Utah, the adapted material is not getting into rulemaking but should. Mr. Mendenhall said it is important to distinguish between policy and rule.

**MOTION:** Sen. Mayne moved to give the department two months to deal with the issue with Mr. Hansen, Director, Division of Administrative Rules, and report back to the committee. Discussion followed. The motion passed unanimously with Rep. Stephens absent for the vote.

**4. Discussion: Draft Bill, "Administrative Rules Revision"** - Ms. Chelsea-McCarty distributed a draft bill titled, "Administrative Rules Revision," introduced the issue and introduced Mr. John Fellows, Associate General Counsel, Office of Legislative Research and General Counsel. He provided the history behind the use of the word "implicit" in the Administrative Rulemaking Act. He distributed a handout titled "Historically, the Legislature Had Three Reasons for Requiring Explicit or Implicit Statutory Authorization for Rules." In the 1980's the Administrative Rules Review Committee was concerned with the number of regulations hidden in policy manuals and erred on the side of requiring that rulemaking be done whenever they take action that affects people; this had the effect of triggering a lot of implicit rulemaking that is

compensated only by the committee's power to target specific rules with the annual sunset bill.

Mr. Gary Doxey, Governor's Legal Counsel, said the use of "implicit" is an attempt to force agencies to make rules. He added, however, that its intent is not to give agencies "implicit" authority to write rules, but to require that they take action in a process open to public comment. He referred to the annual sunset bill as a safety net that assures that the legislature can step in when they feel a specific rule has gone too far.

- 5. Committee Business - Next Meetings:** September 28, 1999, and October 12, 1999
- 6. Adjourn -** Rep. Ure, as chair, and in the absence of a quorum, ruled the meeting adjourned at 11:40 a.m.

